

MALAMUT & ASSOCIATES, LLC

Mark R. Natale, Esq.

457 Haddonfield Road, Suite 500

Cherry Hill, New Jersey 08002

*Attorneys for Defendant, Office of the Burlington County Clerk*

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

---

ANDY KIM, et al.,

Plaintiffs,

Case No.: 3:24-cv-01098-ZNQ-TJB

vs.

CHRISTINE GIORDANO HANLON, in her  
official capacity as Monmouth County Clerk,  
et al.,

Defendants.

---

**CERTIFICATION OF BENJAMIN R. SWARTZ**

Benjamin R. Swartz, of full age, being duly sworn according to law, deposes and says that:

1. I am the Principal State Certification Manager for Election Systems & Software, LLC.
2. I have reviewed the rebuttal certification to my original affidavit provided by Ryan Macias.
3. I am unable to testify at today's hearing because I am currently attending election site support for an ongoing election in another state.
4. Additionally, the two other individuals in my department who would be qualified and knowledgeable enough to testify are at state certification events.
5. All of these events were planned prior to the initiation of this lawsuit, are key to election administration, and cannot be moved.
6. While I am not personally responsible for the internal testing of our voting machines, I have 14 years of experience working with our relevant departments who test ballots and

voting machines to ensure accurate tabulation. In addition, I have direct experience working with the New Jersey certification and re-certification process.

7. While I cannot be there to testify, I wanted to address Mr. Macias' certification, particularly what it says on testing and certification.
8. With any significant ballot design change, such as the one proposed in this lawsuit, we would have to conduct extensive internal accuracy testing.
9. Based on my general knowledge of the testing process after working fourteen years alongside our customer support team, I know that their test requires approximately 1.5 million system wide manual votes to ensure accuracy. Also based on my experience, I estimate this process will take two weeks.
10. This internal testing will be required whether or not the State requires recertification.
8. Additionally, in paragraph 51 of his certification, Mr. Macias claims that there "is no need to recertify or retest" any of the ES&S voting systems already in use.
9. Mr. Macias is mistaken to state with certainty that the machines would not have to be re-certified by the New Jersey Division of Elections.
10. The voting system certification process is designed to verify that the voting system satisfies current state statute, administrative rule, and common practices such as current ballot layout practices within a particular state.
11. The most important aspect of a voting system certification is to detect, mitigate, and therefore prevent tabulation errors in the field.
12. The requested ballot layout was not demonstrated by ES&S during the voting system certification examination of EVS 6.2.0.0 or EVS 6.3.0.0 with the New Jersey of Elections.
13. In saying that the voting systems would not need to be retested or the voting system would not require recertification, Mr. Macias is ignoring the risk of tabulation errors any time a ballot layout is re-designed or deviated from what was demonstrated during the voting system certification or the established ballot layout practices currently done in New Jersey.
14. The ballot layout demonstrated during the voting system certification was a traditional grid-style layout with candidates listed in columns and not the office-block layout Mr. Macias pointed out in his certification.
15. A substantial change in ballot layout and format to what the New Jersey Division of Elections witnessed during the voting system certification process, raises the risk of voter confusion on election day therefore potential tabulation errors.

16. In the end, whether this ballot layout change would require re-certification prior to use in New Jersey elections is the decision of the New Jersey Division of Elections.
17. If the New Jersey Division of Elections requires re-certification of the voting system in order to confirm that the requested ballot layout modifications satisfy current state statutes, administrative rule, and certification requirements, that process takes an additional one to three months, as it requires extensive testing with the New Jersey Division of Election and potentially an independent evaluation by a third party should a systematic change be required to accommodate this specific ballot layout request.

DATE Mar 18, 2024

*Benjamin Swartz*  
Benjamin Swartz (Mar 18, 2024 09:13 CDT)

Benjamin R. Swartz

# BenjaminRSwartz Certification\_

Final Audit Report

2024-03-18

Created:	2024-03-18
By:	Danielle Drew (ddrew@malamutlaw.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAf1mH0kJ3ddByHlc5iALP9_W-e1ni2TaS

## "BenjaminRSwartz Certification\_" History

-  Document created by Danielle Drew (ddrew@malamutlaw.com)  
2024-03-18 - 1:32:49 PM GMT- IP address: 50.198.227.74
-  Document emailed to Ben Swartz (ben.swartz@essvote.com) for signature  
2024-03-18 - 1:33:05 PM GMT
-  Email viewed by Ben Swartz (ben.swartz@essvote.com)  
2024-03-18 - 1:51:13 PM GMT- IP address: 206.204.33.150
-  Signer Ben Swartz (ben.swartz@essvote.com) entered name at signing as Benjamin Swartz  
2024-03-18 - 2:13:51 PM GMT- IP address: 155.190.20.5
-  Document e-signed by Benjamin Swartz (ben.swartz@essvote.com)  
Signature Date: 2024-03-18 - 2:13:53 PM GMT - Time Source: server- IP address: 155.190.20.5
-  Agreement completed.  
2024-03-18 - 2:13:53 PM GMT



Adobe Acrobat Sign